

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201411366	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/02/2014 3:30 PM	Location of Incident: [REDACTED]	Precinct: 121	18 Mo. SOL 5/2/2016	EO SOL 5/2/2016	
Date/Time CV Reported Sun, 11/02/2014 4:38 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/07/2014 3:28 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Thomas Smith	00000	939495	121 PCT
2. POM Joseph Curto	03697	950264	121 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Falzarano	08668	948951	121 PCT
2. POM Michael Simone	11176	948136	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Thomas Smith	Abuse: Lt. Thomas Smith entered and searched § 87(2)(b) in Staten Island.	[REDACTED]
B.POM Joseph Curto	Abuse: PO Joseph Curto entered and searched § 87(2)(b) in Staten Island.	[REDACTED]
C.LT Thomas Smith	Discourtesy: Lt. Thomas Smith spoke rudely to § 87(2)(b) and § 87(2)(b)	[REDACTED]
D.LT Thomas Smith	Force: Lt. Thomas Smith used physical force against § 87(2)(b)	[REDACTED]
E. An officer	Force: An officer used pepper spray against § 87(2)(b)	[REDACTED]

Case Summary

On November 2, 2014, at 3:16 p.m., Lt. Thomas Smith and PO Joseph Curto responded to § 87(2)(b) in Stein Island after receiving a radio run regarding an assault in progress. Lt. Smith and PO Curto had responded to this location twice previously that day, first in regards to an assault, and later in regards to an emotionally disturbed person. Multiple 911 calls had originated from the location reporting that a male was beating his mother and daughter at the location (encl. X). Lt. Smith and PO Curto were permitted to enter the apartment (**Allegations A and B**). Immediately upon entering the apartment, Lt. Smith allegedly spoke rudely to § 87(2)(b) and § 87(2)(b) two of the occupants of the house. Lt. Smith allegedly made various discourteous remarks throughout the incident (**Allegation C**). The officers were informed that § 87(2)(b) § 87(2)(b) sister and the victim of the assault, was on the second floor, and they went upstairs to speak with her. The officers began looking for § 87(2)(b) § 87(2)(b) § 87(2)(b) brother and the alleged perpetrator of the assault. Eventually § 87(2)(b) was considered to be in commission of obstruction of governmental administration. § 87(2)(b) resisted arrest, and alleged that Lt. Smith elbowed her in the stomach, slammed her down to the floor, and stepped on the right side of her face with his boot (**Allegation D**). While § 87(2)(b) § 87(2)(b) was on the floor and officers struggled to handcuff her, an officer pepper sprayed her (**Allegation E**).

§ 87(2)(b) provided a video she recorded on her cell phone during the incident, but it did not capture any of the allegations, only the incident's aftermath.

Mediation, Civil and Criminal Histories

This case was unsuitable for mediation. A search of the NYPD Booking and Complaint system on June 18, 2015, indicated that § 87(2)(b) has no arrest in the past ten years (encl. 17A). § 87(2)(g)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]	86(1)
	(b)&(1)
	[§ 87(2)]

Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) and § 87(2)(b) first with the CCRB. § 87(2)(b) has two prior CCRB complaints regarding the same incident. One was closed as a duplicate, and the other as complainant uncooperative (encl. 4C-F).
- Lt. Smith has been a member of the NYPD for nine years. In case number 201307074, premises entered and searched; and discourtesy allegations were substantiated against Lt. Smith. The Board recommended instructions for both substantiated allegations. For the premises entered and searched allegation, the NYPD disposition was listed as no disciplinary action, but instructions were imposed as a penalty. For the discourtesy allegation, the NYPD disposition was also instructions, but no penalty was imposed (encl. 4A). PO Curto has been a member of the NYPD for three years, and has no allegations substantiated against him (encl. 4B).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) did not see which officer pepper sprayed her. The officers involved in this case either did not recall who used pepper spray or did not recall any was used. § 87(2)(g)

§ 87(2)(g)

Allegations not pleaded

§ 87(2)(g)

Allegation A—Abuse of Authority: Lt. Thomas Smith entered and searched § 87(2)(b) in Staten Island.

Allegation B—Abuse of Authority: PO Joseph Curto entered and searched § 87(2)(b) in Staten Island.

Prior to their arrival at § 87(2)(b) provoking this incident, Lt. Smith and PO Curto had responded to the location twice previously on November 2, 2014—once regarding an assault in progress, and once regarding an emotionally disturbed person, which was § 87(2)(b). § 87(2)(b) was removed from the scene for psychiatric evaluation, but returned home a few hours later.

At 3:16 p.m., Lt. Smith and PO Curto responded to the location due to multiple 911 calls regarding an ongoing assault. The investigation determined that § 87(2)(b) and § 87(2)(b) made these 911 calls. § 87(2)(b) reported that her son, § 87(2)(b) was beating her and her daughter. § 87(2)(b) reported that her brother was attacking her and her baby, and she needed an ambulance immediately. She also provided a description of § 87(2)(b) and what he was wearing at the time. It is undisputed that Lt. Smith and PO Curto were permitted to enter the location without incident. The members of the household interviewed by the investigation testified that § 87(2)(b) had left the house prior to the officers' arrival, but § 87(2)(b) said that § 87(2)(b) told the officers that she was not sure whether § 87(2)(b) was in the house at the time. § 87(2)(b) and § 87(2)(b) both testified that § 87(2)(b) and § 87(2)(b) both lived in the basement of the house, but each had his or her own distinct apartment. The officers testified that when they spoke to the victim of the alleged assault, § 87(2)(b) she told them that § 87(2)(b) had gone downstairs. The officers went to the ground floor of the house, but did not find § 87(2)(b). They located the door to the basement, and found § 87(2)(b) attempting to open the door with a knife. By all accounts, all the civilians present were aware that the officers were looking for § 87(2)(b). However, § 87(2)(b) and § 87(2)(b) told the officers that there was no reason for them to go into the basement because they were supposed to be dealing with § 87(2)(b) erratic behavior, and § 87(2)(b) was upstairs. The officers descended into the basement, and quickly returned upstairs after determining that § 87(2)(b) was not down there.

An officer's warrantless entry into a home can be justified if exigent circumstances are present or a civilian provides consent to enter. The gravity or violent nature of the suspected offense, the reasonable belief that the suspect is armed, probable cause to believe that the suspect is in the premises being entered, a likelihood that the suspect will escape and the peaceful circumstances of the entry are factors analyzed in determining whether exigent circumstances were present at the time of an officer's warrantless entry. *People v. McBride*, 14 N.Y.3d 440 (210) (encl.1A-G). The emergency aid exception permits officers' warrantless entry into a home to render emergency assistance to an injured occupant or prevent imminent injury to an occupant. *Kentucky v. King*, 131 S. Ct. 1849 (2011) (encl. 2A-O).

§ 87(2)(g)

Allegation C—Discourtesy: Lt. Thomas Smith spoke rudely to § 87(2)(b) and

§ 87(2)(b)

§ 87(2)(b) alleged that upon entering the house, Lt. Smith said, “This is the third fucking time that I came here, and you guys are animals. Where the fuck is your sister?” § 87(2)(b) corroborated that Lt. Smith made a comment along those lines. When Lt. Smith found § 87(2)(b) trying to unlock the door to the basement with a knife, he allegedly asked her, who the “fuck” had locked the door. § 87(2)(b) said that she told Lt. Smith that he needed a warrant to go downstairs, he told her to “Get the fuck out of the way.” § 87(2)(b) alleged that he told her the same thing. When he argued with § 87(2)(b) about her being on the phone, he told her, “Hang up the fucking phone.” § 87(2)(b) corroborated that Lt. Smith made that discourteous remark. When § 87(2)(b) told him she was on the phone with 911, he allegedly told her, “I’m the lieutenant, bitch!” When Lt. Smith transported § 87(2)(b) to the stationhouse, he allegedly told her, “You fucking bitch, I’m supposed to be with my fucking daughter, and I’m here with you, you fucking animal.” § 87(2)(b) did not corroborate any of the aforementioned discourteous remarks in her statement.

Lt. Smith denied making any of the aforementioned discourteous remarks or using any profanity toward any civilian during the incident. PO Curto also denied hearing Lt. Smith make any of the aforementioned remarks or use any profanity toward any civilian present either. § 87(2)(g)

Allegation D—Force: Lt. Thomas Smith used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) attempted to prevent Lt. Smith and PO Curto from entering the basement while they were attempting to locate § 87(2)(b). It is undisputed that it took four officers to take § 87(2)(b) into custody and that Lt. Smith broke his right pinky finger upon falling to the floor.

§ 87(2)(b) and § 87(2)(b) statements were consistent that § 87(2)(b) called 911 to report the officer’s behavior in the house, inciting Lt. Smith to argue with her to get off the phone. § 87(2)(b) alleged that when Lt. Smith was arguing with her to get off the phone, he elbowed her in the stomach. She exclaimed that she was pregnant. Lt. Smith then forcefully pushed her to the floor, where she landed on her leg, causing significant pain. § 87(2)(b) testified that § 87(2)(b) struggled with the officers to prevent them from accessing her hands to cuff them. § 87(2)(b) and § 87(2)(b) said that the officers pushed § 87(2)(b) to the floor, and § 87(2)(b) specified that she was lowered down to the floor. No other witness corroborated that Lt. Smith elbowed § 87(2)(b) in the stomach (encl. 7A-I, 8A-K, 9A-H)).

Lt. Smith denied taking such actions, and PO Curto did not observe Lt. Smith elbow § 87(2)(b) Lt. Smith and PO Curto testified that § 87(2)(b) engaged in a protracted struggle with the officers to impede their efforts to handcuff her. Lt. Smith also testified that § 87(2)(b) pushed and kicked him and the other officers. Although § 87(2)(b) was the only person under arrest at the location, it took the efforts of four officers to get her cuffed. Lt. Smith fell to the floor as a result of § 87(2)(b) pushing him, and PO Curto testified that the officers fell the floor along with § 87(2)(b). The line-of-duty paperwork regarding Lt. Smith's injury, and PO Curto and PO Simone's injuries to their backs indicates that PO Curto, PO Simone and Lt. Smith all fell to the floor as a result of § 87(2)(b) flailing her arms and pushing the officers. PO Curto and PO Simone's falls caused them to injure their backs, and Lt. Smith's finger broke as a result of the officer's falling on top of it. Lt. Smith's injury required surgery and an extended hospital stay. Line of duty status was designated for all three injured officers. PO Falzarano documented in his memo book that § 87(2)(b) intentionally pushed him, which resulted in a struggle causing injury to PO Curto, PO Simone and Lt. Smith.

§ 87(2)(b) received medical treatment at § 87(2)(b) following the incident. She complained of knee pain, and was found to have knee and foot contusions. She did not sustain any other significant injury. She made no complaint of abdominal pain.

§ 87(2)(g)

Allegation E—Force: An officer pepper sprayed § 87(2)(b)

It is undisputed that an officer pepper sprayed § 87(2)(b) while she resisted arrest. Patrol Gide Procedure 212-95 authorizes officers to use pepper spray when they reasonably believe its use is necessary to protect themselves or others from the unlawful use of force, establish physical control of a subject resisting arrest, and effect said arrest. Officers should consider the use of pepper spray as a useful alternative to reduce potential injury caused by physical force (encl. 3A-D).

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date